

## Internal Revenue Service, Treasury

## § 31.6652(c)-1

which payment is made or deemed to be made.

(2) *Example.* The application of this paragraph may be illustrated by the following example.

*Example.* Employee A rendered services to X during 1973 for which he was paid compensation at the monthly rate of \$650 which was taxable under the Railroad Retirement Tax Act. A was paid \$550 by X in January 1973 which was earned and deemed received in December 1972 and \$650 in January of 1974 which was earned and deemed received in December of 1973. A also earned and received wages in 1973 from employer Y, which were subject to the employee tax under the Federal Insurance Contributions Act, in the amount of \$6,000. A paid hospital insurance tax on \$13,800 (\$7,800 compensation from X including \$650 earned and deemed received in December 1973 but paid in January 1974 and not including \$550 paid in January 1973 but earned and deemed received in December 1972, \$6,000 compensation from Y) received or deemed received or earned in 1973. For purposes of the hospital insurance tax imposed by section 3101(b), these amounts are all wages received from an employer in 1973. Therefore, A is entitled to a special refund for 1973 under section 6413(c) and this section of  $\$30 (1.0\% \times \$13,800 - 1.0\% \times \$10,800)$ .

[T.D. 6516, 25 FR 13032, Dec. 20, 1960, as amended by T.D. 6950, 33 FR 5359, Apr. 4, 1968; T.D. 6983, 33 FR 18020, Dec. 4, 1968; T.D. 7374, 40 FR 30954, July 24, 1975; T.D. 7374, 69 FR 57639, Sept. 27, 2004]

### § 31.6414-1 Credit or refund of income tax withheld from wages.

(a) *In general.* (1) Any employer who pays to the IRS more than the correct amount of income tax required to be withheld from wages under section 3402 or interest, addition to the tax, additional amount, or penalty with respect to such tax, may file a claim for refund of the overpayment in the manner and subject to the conditions stated in this section on the form prescribed by the IRS. The claim for refund must designate the return period to which the claim relates, explain in detail the grounds and facts relied upon to support the claim, and set forth such other information as may be required by the regulations in this section and by the instructions relating to the form used to make such claim. No refund to the employer will be allowed under this section for the amount of any overpayment of tax which the employer deducted or withheld from an employee.

(2) For provisions related to furnishing employee statements and corrected employee statements reporting wages and withheld taxes, see sections 6041 and 6051 and §§ 1.6041-2 and 31.6051-1. For provisions relating to filing information returns and corrected information returns reporting wages and withheld taxes, see sections 6041 and 6051 and §§ 1.6041-2 and 31.6051-2.

(3) For interest-free adjustments of overpayments of income tax withheld from wages, see § 31.6413(a)-2.

(b) *Period of limitation.* For the period of limitation upon credit or refund of taxes imposed by the Internal Revenue Code of 1954, see § 301.6511(a)-1 of this chapter (Regulations on Procedure and Administration). For the period of limitation upon credit or refund of any tax imposed by the Internal Revenue Code of 1939, see the regulations applicable with respect to such tax.

[T.D. 6516, 25 FR 13032, Dec. 20, 1960, as amended by T.D. 9405, 73 FR 37382, July 1, 2008]

### § 31.6652(c)-1 Failure of employee to report tips for purposes of the Federal Insurance Contributions Act.

(a) *In general.* In the case of failure by an employee to furnish, pursuant to the provisions of section 6053(a), to his employer a report of tips received by him in the course of his employment, which constitute wages (as defined in section 3121(a)), there shall be paid by the employee, in addition to the tax imposed by section 3101 with respect to the amount of tips which he so failed to report, an amount equal to 50 percent of such tax. The additional amount imposed for such failure shall be paid in the same manner as tax upon notice and demand by the district director.

(b) *Reasonable cause.* Payment of an amount equal to 50 percent of the tax imposed by section 3101 with respect to the tips which the employee failed to report will not be required if it is established to the satisfaction of the district director or the director of the regional service center that such failure was due to reasonable cause and not due to willful neglect. An affirmative showing of reasonable cause must be made in the form of a written statement, containing a declaration that it